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Case No. 88-8018

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

IN RE:
JACK R. WHITEHORN AND
MARY RUTH WHITEHORN,
DEBTORS,

JACK R. WHITEHORN AND
MARY RUTH WHITEHORN,
PETITIONERS,

V.

MARGARET H. MURPHY AND LAW FIRM:
SMITH, GAMBRELL & RUSSELL,
DEFENDANTS (APPELLEES).

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

**ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES
PURSUANT TO TITLE 28 U.S.C. § 1254**

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a bankruptcy court in one judicial district can disturb or remove property of a debtor-in-possession, held by a third party, under the protection of a bankruptcy court in another judicial district without lifting of automatic stay on said estate property by the bankruptcy court of commencement?

2. Whether the United States Bankruptcy Court, Northern District of Georgia, Newnan Division, attempted to issue order to sell, cancel or trade this Petitioners/Debtors' estate property under the exclusive jurisdiction of the United States Bankruptcy Court, District of Nevada?

3. Whether the petitioners have been denied their civil liberties, due process of law, and have been a victim of obstruction of justice?

4. Whether the lower courts' opinion of jurisdiction is in conflict with this Honorable Court's precedent?

5. Whether the lower courts' opinion is in direct conflict with precedent of this Honorable Court's rulings related to property of the estate?

6. Whether the lower courts' opinion is in direct conflict with precedent of this Honorable Court's rulings with reference to Debtor's adequate protection and protection of property interest derived from the Fifth amendment?

7. Whether the lower courts are in direct conflict with this Honorable Court's Bankruptcy Rules 7001, 7070 and 4001?

8. Whether the lower court erred as a matter of equity and law regarding the doctrine of res judicata?

9. Whether the ruling Court of Appeals for the Eleventh Circuit rendered their decision in conflict with other federal circuit courts of appeals?

10. Whether the lower courts' opinion is in direct conflict with this Honorable Court's precedent with reference to due process and equal protection?

PARTIES OF INTEREST TO THE PROCEEDING

Persons interested in the outcome of this proceeding are:

1. Judge of court of commencement of Petitioners/Debtors Jack R. Whitehorn and Mary Ruth Whitehorn's Chapter 11 proceeding: United States Bankruptcy Court Judge for District of Nevada, Robert Clive Jones.
2. Jack R. and Mary Ruth Whitehorn, Petitioners/Debtors and numerous creditors of the estate.
3. Judge issuing original order: United States Bankrutpcy Judge W. Homer Drake, Jr.
4. Reviewing Judge: United States District Judge G. Ernest Tidwell.
5. Reviewing Justices of the United States Court of Appeals for the Eleventh Circuit: Judges Hill, Fay and Kravitch.

6. Counsel to Appellees, Margaret H. Murphy and Smith, Gambrell & Russell Law Firm: P. Stephen Kratsch and Edward C. Brewer, III, Smith, Gambrell and Russell, Atlanta, Georgia.

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LOWER COURTS' OPINION REFERENCE AND JURISDICTION

This is a petition for issue of a writ of certiorari from a final judgment by the United States Court of Appeals for the Eleventh Circuit (date of entry of final judgment, July 22, 1988). Jurisdiction of the instant said petition is lodged in this Honorable Court pursuant to Title 28, U.S.C. § 1254.

Complaint was filed April 3, 1986 by Petitioners/Debtors and answered by Appellees. (Appendix 1) On motion of Appellees for change of venue, motion was granted and moved to the Northern District of Georgia, Newnan Division by order of the United States Bankruptcy Court, District of Nevada; order entered December 17, 1986. (Appendices 7 and 8)

Summary judgment motions were filed by Appellees and Petitioners/Debtors respectively. The United States

Bankruptcy Court, Northern District of Georgia, Newnan Division entered a judgment/order July 31, 1987. (Appendix 6)

On appeal to the United States District Court, Northern District of Georgia, Newnan Division by Petitioners/ Debtors, an order was entered on December 23, 1987 by said court. (Appendix 5)

On appeal to the United States Court of Appeals for the Eleventh Circuit, an order was entered on May 26, 1988 by said court. (Appendix 4)

On Petitioners/Debtors' suggestion for rehearing in banc, the appeals court denied the rehearing by order entered July 22, 1988. (Appendix 3)

A motion for stay of mandate pending application for writ of certiorari was filed August 1, 1988. The motion was granted by order entered August 16, 1988. (Appendix 2)

STATUTES INVOLVED

Bankruptcy is a federal field, unquestionably, the United States Constitution is paramount. Due process, equal protection and other constitutional guarantees must be accorded. Any trial, wherein the appearance of justice is lacking, is barred by the Fifth Amendment as lacking in due process.

Basis for the Bankruptcy Law is Article 1, Section 8 of the United States Constitution.

The grant of jurisdiction in bankruptcy matters in both 1978 legislation and the 1984 modifications is contained in a single section of Title 28. What was Section 1471 under the former has become Section 1334 of the latter.

Title 28 § 1334(d) sets out:

> "The district court in which a case under Title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located,

> of the debtor as of the commencement of such case, and of property of the estate."

Title 28 § 1471(e) sets out:

> "The bankruptcy court in which a case under Title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case."

A bankruptcy court of a different jurisdiction cannot lift the automatic stay activated through a different district pursuant to Title 28 § 1481. Said statute sets out:

> "A bankruptcy court shall have the powers of a court of equity, law and admiralty, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment or imprisonment."

Title 28 § 157(e) provides for a core proceeding as is the proceeding at bar, "orders to turn over property to the estate."

Title 11 § 362 protects a debtor's property wherever located. The automatic

stay is not an act of a court but an act of Congress. Said statute sets out:

> "(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302 or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 U.S.C. 78 eee(a)(3)], operate as a stay applicable to all entities of --
>
> > (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
> >
> > (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
> >
> > (3) any act to obtain possession of the estate or of property from the estate or to exercise control over property of the estate --

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce any lien against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3), does not operate as a stay --

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;

(3) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under subsection 9(a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(5) under subsection (a)(2) of this section, of

the enforcement of a judgment, other than a money judgment, obtained, in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, financial institutions, or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761(4) of this title, forward contracts, or securities contracts, as defined in section 741(7) of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of commodity contracts, forward contracts, securities, or other property held by or due from such commodity broker, forward contract merchant, stockbroker, financial institutions or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward

contracts, or security contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of repurchase agreements against cash, securities or other property held by or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations or property, consisting of five or more living units;

(9) under subsection (a) of this section, of the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property; or

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)

(including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under section 207 or title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1117 and 1271 et seq., respectively), or under applicable State law; or

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.) (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act,

1936 (46 App. U.S.C. 1117 and 1271 et seq. respectively).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsection (d), (e) and (f) of this section.

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate.

(2) The stay of any other act under subsection (a) of this section continues until the earliest of --

(A) The time the case is closed;

(B) The time the case is dismissed; or

(C) If the case is a case under Chapter 7 of this title concerning an individual or a case under Chapter 9, 11, 12 or 13 of this title, the time a discharge is granted or denied."

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay --

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if --

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

(e) thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection

(d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be commenced not later than thirty days after the conclusion of such preliminary hearing.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section --

(1) the party requesting such relief has the

> burden of proof on the issue of the debtor's equity in property; and
>
> (2) the party opposing such relief has the burden of proof on all other issues.
>
> (h) an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Title 11 § 361 provides for adequate protection. Said statute sets out:

> "When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by--
>
> (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

Title 11 § 1108 sets out the authorization to operate business.

"Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business."

Title 11 § 363 use, sale or lease of property; allows the debtor to use, sale of estate property of reorganization of estate. Section 363(c)(1) sets out:

"If the business of the debtor is authorized to be operated under section 721, 1108,

1304, 1203 or 1204 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

Title 11 § 551 provides for automatic preservation of avoided transfer. The statute states:

> "Any transfer avoided under section 522, 544, 545, 547, 548, 549 or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate."

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JACK R. WHITEHORN AND
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Petitioners,

V.

MARGARET H. MURPHY AND LAW FIRM:
SMITH, GAMBRELL & RUSSELL,
Defendants (Appellees).

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES PURSUANT TO TITLE 28 U.S.C. ¡ 1254

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Jack R. Whitehorn and Mary Ruth Whitehorn, debtors and petitioners, herein, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered in the above-entitled case on July 22, 1988; (date of entry of judgment on petition

for rehearing and suggestion of rehearing in banc).

STATEMENT OF THE CASE

The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1254.

Jack R. Whitehorn and Mary Ruth Whitehorn, Petitioners, filed a Voluntary Debtors' Petition in the United States Bankruptcy Court District of Nevada on October 6, 1980. Debtors were qualified and entitled to the benefits of Title 11, United States Code as Voluntary Debtors. Relief was ordered by said Court on October 6, 1980. (See Appendix 8.) All property, wherever located, of Jack R. Whitehorn and Mary Ruth Whitehorn was immediately protected by the automatic stay provided by 11 U.S.C § 362 and was under the exclusive jurisdiction of the United States Bankruptcy Court, District of Nevada.

On the first day of December 1969, a

meeting of the incorporator and director of WFDR, Inc. was held. Jack Whitehorn acquired all of the WFDR, Inc. outstanding stock, 5,050 shares, issued and titled in the name of Jack Whitehorn -- Certificate No. 1 for 50 shares and Certificate No. 2 for 5000 shares. The by-laws were adopted and election of director was held. Jack Whitehorn was elected sole director.

On December 2, 1969, the sole director, Jack Whitehorn, met and elected Jack Whitehorn, President and Treasurer and Mary Whitehorn, Secretary. The President-Treasurer Jack Whitehorn was authorized to borrow funds for the corporation, pledge the assets of the corporation to secure loans as in the judgment of the President shall be for the best interest of the corporation.

Jack Whitehorn talked with Mr. John Neely, Sr., an officer of Citizens State

Bank, on behalf of the corporation's negotiating certain loans from the Citizen State Bank in Butler, Georgia as already had been agreed to and set aside by the bank, pursuant to a letter of credit. As president of WFDR, Inc., Jack Whitehorn pledged the assets of the corporation as collateral for said loan. The initial loan was completed in January 1970.

In addition to corporate assets, Jack Whitehorn pledged the entire outstanding said stock of WFDR, Inc., 5,050 shares, titled to Jack Whitehorn as well as personally guaranteeing the corporate note with Jack Whitehorn's entire personal estate.

The stock was held by the bank over the years as notes were renewed, extended and/or refinanced.

Jack Whitehorn never had a personal note in the Citizens State Bank of

Butler, Georgia.

The last corporate note was made on the 23rd day of July 1979. Jack Whitehorn's WFDR, Inc. stock, the total outstanding stock issued, 5,050 shares was pledged and continued to be held by the bank in addition to corporate assets as collateral. The Citizens State Bank had no power of attorney to transfer or sell the stock.

On March 28, 1980, Jack Whitehorn signed some papers that Debtor thought was a Trust Agreement. Jack Whitehorn was sick, only out of the hospital a few days. The signed document turned out to be a Stock Option Agreement on all of Jack Whitehorn's WFDR, Inc. stock, the entire issued and outstanding stock of the corporation. The said Stock Option Agreement sets out that the Citizens State Bank is the pledgee of the 100 percent outstanding capital stock of

WFDR, Inc.

After discussion with the alleged buyer, John F. Whitehorn, and his agent, Robert Garstin, on May 8, 1980, Petitioner/Debtor, Jack Whitehorn, asserted full authority over the corporation and its holdings as president, sole director and 100 percent stockholder by mailgrams.

On May 9, 1980, without Jack Whitehorn's knowledge or approval of any corporate resolution, WFDR, Inc. filed for Chapter 11 protection under the United States Bankruptcy Code in the United States Bankruptcy Court, Northern District of Georgia, Newnan Division. The only reason for the voluntary petition was the automatic stay of the United Bankruptcy Code to keep Jack Whitehorn away from the property owned by Jack Whitehorn's stock.

The Appellees acted as attorneys for

the Debtor-in-Possession corporation, as well as, estate administrator. The said Attorneys/Appellees did in fact act with conflict of interest as set out in pleadings in lower courts.

Jack Whitehorn's attorneys filed, on his behalf, an adversary proceeding inter alia to recover 100 percent of stock titled to Jack Whitehorn in the WFDR, Inc. Bankruptcy Case 80-00136N in the United States Bankruptcy Court for the Northern District of Georgia, Newnan Division. The complaint in the adversary proceeding was Case No. 80-0034N, filed July 24, 1980. The court subsequently abstained from hearing said proceeding. (No basis for applying the doctrine of res judicata as discussed herein.)

On October 6, 1980, Jack Whitehorn and Mary Ruth Whitehorn filed a personal Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the

District of Nevada. The automatic stay is now active pursuant to 11 U.S.C § 362. The said stock on the active day of the automatic stay was titled to Jack Whitehorn, Debtor named herein, and was being held by the Citizens State Bank, Butler, Georgia. No plan of reorganization by WFDR, Inc. had been offered and/or filed with the United States Bankruptcy Court, Northern District of Georgia, Newnan Division on October 6, 1980, date of automatic stay on all property of Debtor wherever located and under exclusive jurisdiction of the Bankruptcy Court, District of Nevada.

On December 8, 1980, a preference action against John F. Whitehorn for the purpose of recovering the WFDR, Inc. stock was filed in the United States Bankruptcy Court, District of Nevada.

Upon motion by John F. Whitehorn and

after hearing, the Nevada bankruptcy court subsequently transferred said preference proceeding to the United States Bankruptcy Court, Northern District of Georgia, Newnan Division which had jurisdiction over the WFDR, Inc. bankruptcy proceeding. The Honorable Judge Lloyd D. George signed an order, January 30, 1981, retaining Jack Whitehorn and Mary Ruth Whitehorn's bankruptcy case BK-LV-80-936 and transferring only the adversary proceeding No. 800197 filed in BK-LV-80-936.

On this same date, January 30, 1981, WFDR, Inc., the Debtor-in-Possession, in that instant case, filed an application to sell its assets, not Jack Whitehorn's stock.

On February 11, 1981, Jack Whitehorn filed an objection to the sale of the assets of WFDR, Inc. All parties in

interest were advised of the Chapter 11 proceeding pending in the United States Bankruptcy Court, District of Nevada. Jack Whitehorn's assets were now under the protection of the United States Bankruptcy Court, District of Nevada, including all outstanding and issued WFDR, Inc. stock titled in Jack Whitehorn's name.

On March 16, 1981, Bankruptcy Judge W. H. Drake, Jr. ordered the property of WFDR, Inc. could be sold. In a second March 16, 1981 order, Bankruptcy Judge W. H. Drake, Jr. overruled Jack Whitehorn's objection after a hearing on whether or not to approve the sale of the assets, not Jack Whitehorn's stock.

On March 26, 1981, Jack Whitehorn filed a motion for a new trial, for alteration or amendment of judgment or additional findings of facts. Bankruptcy Judge W. H. Drake, Jr. denied the motion

by order, April 8, 1981.

Jack Whitehorn then appealed the said orders of March 16, 1981 and April 8, 1981 to the United States District Court for the Northern District of Georgia, Newnan Division.

On September 18, 1981, the Honorable G. Ernest Tidwell issued an order, denied the appeal, writing the sale of the assets is moot since an amended plan providing for the sale of stock in lieu of sale of the assets was approved and consumated. The Judge wrote the sale of the stock was not appealed and no stay of the sale was obtained by Jack Whitehorn. The issue of the sale of stock is not properly before the court. (Again no basis for res judicata as discussed herein.) Further, WFDR, Inc. and Provident filed a motion with said court requesting the appeal to be dismissed as moot. The said order was granting motion

of Appellees. Orders which are not final, or which are made on incidental or collateral to the determination of the main controversy are not generally conclusive or res judicata; Roland v. Barge, 134 S.E. 2d 463, 108 Ga. App. 689.

Petitioners/Debtors felt no appeal or stay was necessary since an automatic stay through the United States Bankruptcy Court, District of Nevada, mandated by Congress, was in full effect and protecting all the assets, including, but not limited to, the 5,050 shares, 100 percent issued and outstanding WFDR, Inc. stock, titled in Jack Whitehorn's name. However, Jack Whitehorn carried the appeal of the sale of the assets to the Eleventh Circuit Court of Appeals.

The United States Court of Appeals for the Eleventh Circuit simply affirmed the district court findings. This order was issued August 17, 1983.

The appealed March 16, 1981 order issued by Bankruptcy Judge W. H. Drake, Jr. states the parties may restructure the transaction as a stock acquisition or merger. The Judge did not order any transactions that would violate state law or that would interfere with the automatic stay issued through the United States Bankruptcy Court District of Nevada with jurisdiction over Jack Whitehorn's 100 percent issued and outstanding WFDR, Inc. stock, held by the Citizens State Bank of Butler, Georgia as collateral on a corporate loan.

On May 27, 1981, WFDR, Inc. filed a disclosure statement and an amended plan of reorganization with the Georgia Bankruptcy Court. Jack Whitehorn objected to the disclosure statement but was overruled by order, June 17, 1981. Jack Whitehorn objected to the Amended Plan of Reorganization, especially the

Section doing away, selling or cancelling Jack Whitehorn estate's stock. The said disclosure statement and amended plan was executed by Robert M. Garstin, again asserting that he is President of WFDR, Inc. Jack Whitehorn was again overruled by Bankruptcy Judge W. H. Drake, Jr. by Order, June 29, 1981. Jack Whitehorn did not appeal this order. Debtor felt no appeal was needed. Said stock was already stayed as of October 6, 1980, by the United States Bankruptcy Court, District of Nevada under § 362 of the Bankruptcy Code which automatically enjoins and stays all persons and entities from taking any action pertaining to said estate unless a proceeding to lift stay be filed before the court of jurisdiction, the United States Bankruptcy Court, District of Nevada. No said proceeding was or has ever been filed. (See Appendix 8.)

During the month of August 1981, Debtor heard of some type of stock closing concerning Jack Whitehorn's WFDR, Inc. stock. Debtor again checked the United States Bankruptcy Court, District of Nevada Clerk file to be sure that nothing had been filed concerning the lifting of automatic stay on said stock. There was not, nor is there now, any document pertaining to selling, cancelling or doing anything with said stock. Debtor or the bankruptcy court of jurisdiction was not, and has never been, notified by any party involved in the alleged stock deal of the time, date or place for removing said stock from the Citizens State Bank where Jack Whitehorn left said stock pledged as collateral on a corporate loan. Debtor called legal counsel and asked if he had heard of any transaction concerning said stock. He said he had not but would check on it.

He called back and advised that he understood some type of stock deal had taken place. Debtor asked him to write to whomever he thought would be proper, putting the alleged purchaser of Jack Whitehorn's stock on notice that any purchase of said stock or any stock transaction of WFDR, Inc. was without Debtor's approval and without the approval of the court who had jurisdiction over said stock. He did write a letter to Mr. Bird, Attorney for Provident Broadcasting Company, setting out objection and advising the transaction would be null and void.

The Adversary Case 80-0197, transferred from the United States Bankruptcy Court, District of Nevada to the United States Bankruptcy Court, Northern District of Georgia, Newnan Division, becoming Adversary Case No. 81-0039N was tried before Bankruptcy

Judge W. Homer Drake on December 16, 1981 and continued on January 27, 1982. The court found the transfer of the March 28, 1980 Stock Option Agreement, a voidable preference, the order signed August 12, 1982, entered August 18, 1982.

John F. Whitehorn, timely filed a notice of appeal within ten days of the filing of the order of August 18, 1982.

The Honorable Judge G. Ernest Tidwell of the United States District Court for the Northern District of Georgia, Newnan Division signed an order on the 25th day of May 1983, entered on the 27th day of May 1983. The court granted the appeal and wrote in part, "Whether or not the Stock Option Agreement is a voidable preference is an issue clearly separable from the main actions, since the two related main actions involve the reorganization of a radio station holding company and two individuals. The instant

action involves the stock of the radio station holding company in general, and the questions of ownership of that stock in particular. Although the question of stock ownership is related to the two pending reorganization actions, the issue of 'who owns the stock' is separable because the pending reorganizations are taking place and will continue to take place while the disputed stock is physically held by a bank in Butler, Georgia awaiting dispositions of the ownership issues." (At this time, Petitioners' stock had already been moved, sold, cancelled or traded.) The court wrote, the court also concludes that the issues raised in this appeal are too important to be denied appellate review at this time because the issue of stock ownership must be determined before the radio holding company is able to operate independently of the bankruptcy

court. The court wrote, the date of the Stock Option Agreement to be avoided was March 28, 1980. The court vacated the judgment and remanded the action to the bankruptcy court for compliance with Bankruptcy Rule 752 as to the issues raised in Appellees' § 547 claims of a voidable preference.

Bankruptcy Judge W. Homer Drake did not respond to the Honorable District Court order.

On July 14, 1983, Margaret H. Murphy, Estate Administrator and Attorney for the Estate Administrator, along with the Committee of Unsecured Creditors filed an application to settle claims. The Petitioners/Debtors objected to the application on many grounds as set forth in the objections filed with the Georgia bankruptcy court.

On January 25, 1983, one order was signed by Bankruptcy Judge Drake and on

January 25, 1984, another order was signed by Judge Drake, both orders were entered on January 26, 1984. The order signed by Judge Drake, January 25, 1983, was captioned "Order Granting Applications to Settle Claims." The order signed on January 25, 1984, was captioned "Order." In the January 25, 1984 order, on the final page (page 13), the court sets out in the next to last paragraph that the preference action successfully brought by Mr. Jack Whitehorn against Dr. John Whitehorn regarding the pre-petition transfer of stock has been remanded to this court for additional findings of fact. However, the preference action has become moot (not settled by judicial decision, therefore no basis for res judicata) under the terms of the settlement by which Dr. John Whitehorn disavows any interest in the equity of the Debtor. This order leaves no

questions pertaining to time frame, pre-petition or ab-initio.

Over the years, after filing for protection under Chapter 11 of the United States Bankruptcy Code, October 6, 1980, Petitioners/Debtors have received on two or three different occasions, a white sheet of paper with Certificate of Interest typed and underlined. The paper has not been signed by anyone. Debtor thinks it is supposed to represent said stock in WFDR, Inc. It states it is issued in lieu of Jack Whitehorn's shares which were cancelled upon confirmation of the amended plan of reorganization of WFDR, Inc. in the United States Bankruptcy Court, Northern District of Georgia, Newnan Division. It further states that the holder shall have an interest in the proceeds of the sale of stock of WFDR, Inc. as set out in the plan and as determined by order of the

court. This alleged stock certificate is worthless, has no authority and is evidence of contempt of the United States Bankruptcy Court, District of Nevada, by the person(s) or entity preparing and transmitting same said documents. Only the Honorable United States Bankruptcy Court, District of Nevada has jurisdiction over Debtors' estate (stock included) by automatic stay issued October 6, 1980 and Judge Lloyd D. George's orders signed January 30, 1981, entered February 2, 1981, transferring the adversary proceeding, only, and retaining jurisdiction of Debtor Case BK-LV-80-936. The amended plan of WFDR, Inc. referred to, is executed by Robert M. Garstin who has no authority to sign any document on behalf of WFDR, Inc. due to Jack Whitehorn's being the rightful owner of all WFDR, Inc. corporate stock as ruled by Bankruptcy Judge W. Homer

Drake in the final order entered January 26, 1984.

A written request was made to Appellees for property of Debtor after Judge Drake's order entered January 26, 1984. Said communications requested written response.

On November 12, 1984, written response was received from Appellees denying Petitioners/Debtors' property that was granted pursuant to Judge Drake's final January 26, 1984 order.

The stock is property which Petitioners/Debtors may use, sell or lease under 11 U.S.C. § 363. The only reasonable, feasible method to salvage any possible return for Debtor's creditors is to proceed with the plan of reorganization as set out in the disclosure statement filed October 2, 1985, in the United States Bankruptcy Court for the District of Nevada.

Debtors are most concerned about the best interest of the estate, but foremost is the protection of said creditors.

The ownership of the WFDR, Inc. stock as outlined in the original petition seeking protection under the Bankruptcy Code Chapter 11 proceeding and instant relief ordered by the United States Bankruptcy Court, District of Nevada on October 6, 1980 has been litigated for over seven years.

On October 2, 1985, a disclosure statement and plan of reorganization ("plan") was filed with the Petitioners/ Debtors' "Home" bankruptcy court (the commencement court of Petitioners/ Debtors' Chapter 11 proceeding), the United States Bankruptcy Court, District of Nevada. The said plan inter alia utilized the property ("stock") held by Petitioner/Debtor, Jack Whitehorn, free and clear of all liens pursuant to the

above actions stated herein to reorganize the debtor pursuant to Title 11, Chapter 11, United States Code.

An objection was filed by Dr. John F. Whitehorn of Dallas, Texas and more important, an objection was filed on or about December 16, 1985 by Defendant Margaret H. Murphy and Smith, Gambrell & Russell law firm.

A hearing was held before the court on December 17, 1985 and continued on February 27, 1986, wherein the court heard the evidence pertaining to the disclosure statement and plan.

On February 26, 1986, an order which did not approve Debtors' disclosure statement was entered by the court.

The court, from the bench in the December 17, 1985 hearing, set out that Debtors may have to file a turnover proceeding before Debtors could go forward with the plan.

On March 10, 1986, Debtors filed their intention to file a turnover of property adversary proceeding.

On April 3, 1986, the "Complaint to Compel Turnover of Property" was filed. (See Appendix 1.)

Appellees brought a motion for change of venue to the United States Bankruptcy Court, Northern District of Georgia, Newnan Division. This motion was heard on June 24, 1986. (See Appendix 7.)

On December 17, 1986, an amended order was entered, granting the Defendants' motion for change of venue, as well as, setting out that the court "is not presently lifting the stay with respect to any of Mr. Whitehorn's assets." (See Appendix 8.)

Summary judgment motions were filed by the Appellees and Petitioners/Debtors, respectively, in the United States

Bankruptcy Court, Northern District of Georgia, Newnan Divison.

The said court entered a judgment/ order on July 31, 1987. (See Appendix 6.)

Said order was appealed to the United States District Court for the Northern District of Georgia, Newnan Division and on December 23, 1987, the district court entered an order affirming the bankruptcy court's order. (See Appendix 5.)

The district court's order was timely appealed by Petitioners/Debtors to the United States Court of Appeals for the Eleventh Circuit on May 26, 1988. The United States Court of Appeals entered and order affirming the order of the district court. (See Appendix 4.)

On June 13, 1988, a suggestion for rehearing in banc was filed by Petitioners/Debtors. The petition for

rehearing was denied by order of the United States Court of Appeals for the Eleventh Circuit, entered July 22, 1988. (See Appendix 3.) A motion for stay of mandate pending application for certiorari was entered on August 1, 1988. The said motion was stayed by order entered August 16, 1988 to and including September 20, 1988. (See Appendix 2.)

REASONS FOR GRANTING WRIT

ARGUMENTS AND AUTHORITIES

The United States Court of Appeals for the Eleventh Circuit has affirmed a district court order and decided a federal question in a way in conflict with applicable decisions of this Honorable Court, decisions of other courts of appeals and federal statutes of the United States of America.

Title 11 § 551 automatic preservation of avoided transfers, as is this case, must withstand any attempted

circumvention.

First and foremost, the grant of jurisdiction in bankruptcy matters in both 1978 legislation and the 1984 modifications is contained in a single section of Title 28. What was Section 1471 under the former has become Section 1334 of the latter.

The commencement bankruptcy court is given personam jurisdiction, as well as in rem jurisdiction, to handle everything that arises in bankruptcy cases.

The Marathon case forced the bar and the bench to focus on the detailed meaning set out hereinabove; Northern Pipeline Construction Co. v. Marathon Pipeline Co., 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982) judgment stayed 459 U.S. 813, 103 S. Ct. 199, 74 L. Ed. 2d 160 (1982). The lower courts' opinions are in direct conflict with the decision set out hereinabove.

The WFDR, Inc. reorganization proceeding was commenced on May 9, 1980 in the United States Bankruptcy Court for Northern District of Georgia, Newnan Division. On October 6, 1980, Petitioners/Debtors commenced their reorganization in the United States Bankruptcy Court, District of Nevada. Petitioners' case is still pending. Title 28 § 1471(e) is quite clear. Said statute sets out:

> "The bankruptcy court in which a case under Title 11 is commenced shall have exclusive jurisdiction of all of the property wherever located, of the debtor, as of the commencement of the case."

As in the Petitioners' case, the reorganization court is given jurisdiction over the property of the debtor "wherever located" and this jurisdiction extends over property of the Debtor pledged as collateral security for debts, as well as other property belonging to

him. See Continental Illinois National Bank and Trust Co. v. Chicago Rock Island & Pacific Ry. Co., 294 U.S. 648, 675, 55 S. Ct. 595, 79 L. Ed. 1110.

The ruling circuit, the Eleventh Circuit, being petitioned for review, said 11 U.S.C. § 541(a)(7) brings into the estate every interest not covered by a specific provision mandating another treatment; In re Wilson, 694, F. 2d 236 (11 Cir. 1982).

Further, if property recovered was merely out of the possession of the debtor, yet remained "property of the debtor" the debtor's interest in property also includes "title" to property, which is an interest, the result of Segal v. Rochelle, 382 U.S. 375 (1966) [86 S. Ct. 511, 15 L. Ed. 2d 428], is followed.

Title 28 U.S.C. § 1334(d) gives the commencement bankruptcy court exclusive jurisdiction over property in two

categories, The jurisdiction over (1) property of the debtor at the commencement of the case; and (2) property of the estate.

This jurisdiction over property literally deprives other courts of jurisdiction, even if the judge of court being so superseded is on what may be called a higher rung of the judicial ladder than the bankruptcy judge who will have initial handling of the case. For example bankruptcy jurisdiction supersedes admiralty jurisdiction over a vessel; In re Louisiana Ship Management, Inc., 761 F. 2d 1025 (5 Cir. 1985).

It is settled law that upon the filing of a petition under Chapter 10 of the Bankruptcy Act (now Chapter 11 of the Bankruptcy Code), all property in which the debtor has an interest passes under the control of the bankruptcy court, and upon approval of the petition, title

vests in the trustee or the debtor-in-possession as of the date of the filing of the petition. See Gross v. Irving Trust Company, 289 U.S. 342, 344, 53 S. Ct. 605, 77 L. Ed. 1243, 90 A.L.R. 1215; Isaacs v. Hobbs Tie & Timber Company, 282 U.S. 734, 737, 51 S. Ct. 270, 75 L. Ed. 645.

Further, pursuant to Bankruptcy Rule 1007, corporate stock standing in the name of a debtor should be included in his schedule, although hypothecated for its full value; In re Hirsch, D.C. Tenn. 1899, 96 F. 468, 2 Am. Bankr. Rep. 715. (See Appendix 8.)

Third parties that acquire debtor's property during the case are statutorily required to return property of the estate to the bankruptcy trustee or debtor-in-possession pursuant to Title 11 U.S.C. § 542; if the Petitioners/Debtors may use, sell, or lease the property under 11

U.S.C. § 363.

This Honorable Court has made clear that no matter who has custody, or where the property is located, the trustee is entitled to it as property of the estate; United States v. Whiting Pools, -U.S.-, 103 S. Ct. 2309 76, L. Ed. 2d 515, 10 B.C.D. 705 (1983).

This Honorable Court, in 1961, set out that the trustee's avoiding powers speak of the situations as of the date of the petition for relief in bankruptcy; Lewis v. Manufacturers National Bank of Detroit, 364 U.S. 603, 81 S. Ct. 347, 5 L. Ed. 2d 323 (1961).

Since Title 11 § 362 (the automatic stay) is effective on all of Petitioners/ Debtors' property as of October 6, 1980, and no proceeding has been put before the commencement court for lift of stay (see Appendices 7 and 8), said stay is effective from October 6, 1980 to and

including this date.

This Court has set out that acts taken in violation of the automatic stay are "null and void"; Kalb v. Feuerstein, 308 U.S. 433 60 S. Ct. 343, 84 L. Ed. 370 (1940), mandate conformed 234 Wis. 507 291 N.W. 840 (1940).

The violation of the stay can be contempt. This is redressable to the injured party with damages limited to actual injury; In re De Jesus Saez, 721 F. 2d 848, 11 B.C.D. 785 (1 Cir. 1983).

The problem has been raised of which court may interpret the applicability of the stay and what is the priority among courts. The Second Circuit ruled that both the court in which an action claimed to be stayed and the bankruptcy court may determine the application. Even where the reorganization is large and complex and a threat exists of conflicting decisions in various courts, the equities

favor maintenance of the unfettered authority of the bankruptcy court; In re Baldwin-United Corp. Litigation, 765 F. 2d 343, 13 B.C.D. 425 (2 Cir. 1985).

Pursuant to Title 11 U.S.C. § 361, adequate protection and Title 11 U.S.C. § 362 automatic stay, creditor protection is set out. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Section 361(a) defined the scope of the automatic stay by listing the acts that are stayed by the commencement of the case. All proceedings are stayed including arbitration, administration and judicial proceedings. Section 362(2) stays the enforcement against the debtor or against the property of the estate. Section 362(3) stays any act to obtain possession of property of the estate (i.e., property of the debtor as of the date of filing of the petition) or

property from the estate.

The purpose of this provision is to prevent dismemberment of the estate. The concept of adequate protection as set out hereinabove, is derived from the Fifth Amendment protection of property interest as enunciated by this Honorable Court; Wright v. Union Central Life Insurance Co., 311 U.S. 273 (1940) [61 S. Ct. 196, 85 L. Ed. 184, rehearing denied 61 S. Ct. 445, 312 U.S. 711, 85 L. Ed. 1142]; Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935) [55 S. Ct. 854, 79 L. Ed. 1593].

RES JUDICATA

Res judicata was addressed by Petitioners in Plaintiffs' Answer and Response in Opposition to Defendants' Motion for Summary Judgment, United States Bankruptcy Court, Northern District of Georgia, Newnan Division, entered April 21, 1987.

Res judicata was addressed by Petitioners in Movants' Reply Memorandum in Response to Defendants' Answer and Response to Plaintiffs/Debtors-in-Possession's Motion for Summary Judgment entered July 7, 1987, United States Bankruptcy Court, Northern District of Georgia, Newnan Division.

Res judicata was addressed by Petitioners in Appellants' brief filed September 18, 1987 in the United States District Court for the Northern District of Georgia, Newnan Division.

Res judicata was addressed by petitioners in Response of Appellants in Opposition to Appellees' Memorandum of Law entered October 20, 1987 in the United States District Court for the Northern District of Georgia, Newnan Division.

Res judicata was addressed by Petitioners in Brief of Appellants, Jack

R. Whitehorn and Mary Ruth Whitehorn entered on February 22, 1988, United States Court of Appeals for the Eleventh Circuit.

Res judicata was addressed in Reply Brief of Appellants in Opposition to Appellees' Original Memorandum of Law entered April 7, 1988 in the United States Court of Appeals for the Eleventh Circuit.

The following elements still preclude the doctrine of res judicata being applicable in the case of Petitioners/Debtors, and further, these elements are sound reasoning for a grant of writ of certiorari.

(A) The subject matter of the complaint was not settled by a judicial judgment.

(B) A court must be within its jurisdiction to issue a judgment.

(C) The parties were not identical as set out in complaint and other

proceedings referred to by the lower court.

As set out in (A) hereinabove, no turnover proceeding was filed in the case before the complaint. The time frame will show the Court there was no possible course to invoke the doctrine of res judicata. First, the Appellees (Defendants) set out that they sold/ cancelled the property on or about August 18, 1981. The final outcome of the two proceedings filed to recover said property (deciding ownership) as discussed herein (under Statement of Case), proceeding No. 80-0034N -- the court abstained from hearing said proceeding, Case No. 81-0039N -- was found moot, no judicial decision in either proceeding to apply the doctrine of res judicata. There must be a conclusiveness of judgment to apply said doctrine.

As set out in (B) hereinabove, the

Georgia bankruptcy court does not have jurisdiction over the "stock," property titled to Petitioners/Debtors. The commencement court of Petitioners/ Debtors, the United States Bankruptcy Court, District of Nevada, has exclusive jurisdiction over the property of the estate as discussed herein pursuant to 28 U.S.C. § 1471(e). Further, Bankruptcy Rule 7070 sets out:

> "Rule 70 F.R. Civ. P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court." (Emphasis added.)

The Appellees rely on the order of the United States District Court entered on September 18, 1981. The said order granted and sustained the motion of Appellees to dismiss the appeal as moot. The court set out: "The issue of the propriety of the sale of stock is not

properly before this court."

Orders on motion have been said to be res judicata only on the matters adjudicated under the motions; Miney v. Detroit & Cleveland Nav. Co., D.C.N.Y. 96 F. Supp. 505. So, finality within the doctrine of res judicata does not attach to every ruling on law made by a judge on the decision of a motion; Hill v. U.S. ex rel. Wampler, Pa., 56 S. Ct. 760, 298 U.S. 460, 890 L. Ed. 1283.

Moreover, even at this date, the automatic stay is still protecting the property of Petitioners/Debtors from October 6, 1980, 11 U.S.C. § 362(a)(1)(3), (see Appendices 7 and 8) even though Appellees claim to have sold/ cancelled or traded the property. The order (if any) to sell/cancel or trade the property is void for want of jurisdiction over property.

As set out in (C) hereinabove, the

parties involved in proceedings set out herein were not the same as the Petitioners named in the complaint. An order is not res judicata where the essential element of identity of parties is lacking.

The Southmark Case cited by Appellees and the lower court does not represent facts similar to this reviewable instant case. Two distinct facts separate the case, and without question, distinguish the cited case from the petitioned case.

Only one element of the two facts set out is needed to preclude res judicata.

First: A case for the doctrine of res judicata to apply must be within the court's jurisdiction -- Southmark was, the petitioned case was not.

Second: The officer and majority stockholder of Southmark was not,

himself, in a personal reorganization proceeding in a different district and the stock protected by 11 U.S.C. § 362 as the Petitioner's case.

The Petitioners/Debtors want to be clear on the following. If the WFDR, Inc. proceeding was a legal voluntary case (and Petitioners believe not), then:

1. The Georgia bankruptcy court had full jurisdiction over the property of the corporation, i.e., chairs, typewriters, broadcast equipment, etc., but not Petitioners' property, the stock.

2. The corporation did not have treasurer stock.

3. The stock was issued to Jack Whitehorn, therefore, not a part of the corporate assets.

4. The issued 100 percent stock was titled to Jack Whitehorn and became a part of the Whitehorn estate, exclusively under the jurisdiction of United States Bankruptcy Court, District of Nevada on October 6, 1980, protected by 11 U.S.C. § 362, and

still protected by statute; no proceeding to lift stay has been filed, as discussed herein.

The automatic stay, 11 U.S.C. § 362, is one of the fundamental debtor protections provided by the bankruptcy statutes. Subsection (a) defines the scope of the automatic stay, by listing the acts that are stayed by the commencement of the case. All proceedings are stayed, including arbitration, administrative and judicial proceedings. Further, any trial wherein the appearance of justice is lacking is barred by the Fifth Amendment as lacking in due process; In re Murchison, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955).

It has just come to the attention of Petitioners/Debtors that Defendant/ Appellee Margaret H. Murphy was appointed United States Bankruptcy Judge for the Northern District of Georgia and assumed

duties on October 19, 1987.

The reviewing district court's order was not entered until December 23, 1987. The said district court is the United States District Court for the Northern District of Georgia, Newnan Division -- the same district in which Murphy was appointed a bankruptcy judge before the order was entered.

The Judicial Council and the United States Court of Appeals for the Eleventh Circuit had already appointed Appellee Murphy as a bankruptcy judge before acceptance of any pleading by Petitioners/Debtors pertaining to the case being petitioned to this Honorable Court for writ of certiorari.

Pursuant to Title 28 § 455(a)(d)(1), the District Judge as well as the Eleventh Circuit Panel should have disqualified themselves.

No disclosure was even made in any

pleadings of Murphy or by said courts to Petitioners/Debtors so waiver could be acted on.

Further, the aforementioned act may be relevant to the circuit court's denial of Petitioners/Debtors' motion for further stay of mandate and denial of Petitioners/Debtors motion to strike Appellees' response and for sanctions against Edward C. Brewer, III, an Atlanta lawyer. (See Appendix 10.)

Constitutional due process and Petitioners' civil rights have been denied by such an act as set out hereinabove.

CIVIL RIGHTS ACT OF 1964

These Petitioners/Debtors' civil rights have been violated by Appellees' disregard of the automatic stay. This Honorable Court has set out that the Civil Rights Act covers federal statutory rights as well as constitutional ones; Maine v. Thiboutot, 448 U.S. 1, 100 S.

Ct. 2502, 65 L. Ed. 2d 555 (1980).

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

Jack R. Whitehorn
Petitioner/Debtor

Mary Ruth Whitehorn
Petitioner/Debtor

5141 Indian River Drive, Box 377
Las Vegas, Nevada 89103-6148
(702) 367-2102

This 10th day of October 1988

Jack Whitehorn
Appearing Pro se
5141 Indian River Drive, Box 377
Las Vegas, Nevada 89103-6148
(702) 367-2102

P. Steven Kratsch
Edward C. Brewer, III
Attorneys at Law
Smith, Gambrell & Russell
2400 First Atlanta Tower
Atlanta, Georgia 30383
(404) 656-1800
Attorneys of Record for Appellees

Case No. 88-8018

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

IN RE:
JACK R. WHITEHORN AND
MARY RUTH WHITEHORN,
DEBTORS,
JACK R. WHITEHORN AND
MARY RUTH WHITEHORN,
PETITIONERS,

V.

MARGARET H. MURPHY AND LAW FIRM:
SMITH, GAMBRELL & RUSSELL,
DEFENDANTS (APPELLEES).

AFFIDAVIT OF SERVICE

STATE OF NEVADA *
COUNTY OF CLARK *

Jack R. Whitehorn, being first duly sworn, deposes and says that the following set out information is true and correct:

That on the 14th day of October 1988, I mailed three true and correct copies of the

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES PURSUANT TO TITLE 28 U.S.C. § 1254

to Attorneys for Appellees/Defendants:

P. Steven Kratsch
Edward C. Brewer, III
Attorneys at Law
Smith, Gambrell & Russell
2400 First Atlanta Tower
Atlanta, Georgia 30383

by placing same in a properly addressed envelope with first class postage prepaid and mailed by United States Mail from Las Vegas, Nevada.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on Oct 11, 1988

Signature Jack Blakeman

Subscribed and sworn to before me this 11 day of October 1988.

(Seal)

Notary Public-State Of Nevada
COUNTY OF CLARK
SHEILA L. COLEMAN
My Appointment Expires
Aug. 12, 1989

Sheila L. Coleman
Notary Public

Case No. 88-8018

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

IN RE:
JACK R. WHITEHORN AND
MARY RUTH WHITEHORN,
DEBTORS,
JACK R. WHITEHORN AND
MARY RUTH WHITEHORN,
PETITIONERS,

V.

MARGARET H. MURPHY AND LAW FIRM:
SMITH, GAMBRELL & RUSSELL,
DEFENDANTS (APPELLEES).

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

VERIFIED PETITION FOR PERMISSION TO APPEAR PRO SE IN THE ABOVE CAPTIONED CASE PRO HAC VICE

Jack R. Whitehorn Petitioner/Debtor respectfully shows this Honorable Court the following:

That he resides at 5141 Indian River Drive, Box 377, city of Las Vegas, county of Clark, state of Nevada, zip code 89103-6148, telephone number (702) 367-2102;

That this cause of action arises from a bankruptcy proceeding;

That legal representation of record has abandoned this estate without notice to court;

And Jack R. Whitehorn has been proceeding pro se with and from the filing of a disclosure statement and plan of reorganization in the United States Bankruptcy Court, District of Nevada, October 2, 1985.

Petitioner respectfully prays that he be allowed to continue appearing pro se in this Honorable Court for the purposes of the above captioned case only.

Jack R. Whitehorn
Petitioner/Debtor

STATE OF NEVADA *

COUNTY OF CLARK *

Jack R. Whitehorn, Petitioner/Debtor, being first duly sworn, deposes and says:

That the foregoing statements are true.

Jack R. Whitehorn
Petitioner/Debtor

Subscribed and sworn to

Before me this 13th day of 1988 October

Kathleen Ischo
Notary Public

KATHLEEN ISCHO
Notary Public, State of Nevada
Appointment Recorded in Clark County
My Appointment Expires July 16, 1992